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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/764,589 | 01/27/2004 | Takaaki Shimada | 2038-323 | 8968 |
| 22429 | 7590 | 09/11/2006 | EXAMINER | |
| LOWE HAUPTMAN BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314 | | | | HAND, MELANIE JO |
| ART UNIT | | PAPER NUMBER | | |
| | | 3761 | | |

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/764,589 | SHIMADA ET AL. | |
| | Examiner | Art Unit | |
| | Melanie J. Hand | 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 June 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/13/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2006 has been entered.

Response to Arguments

Applicant's arguments filed June 13, 2006 regarding an election restriction requirement applied to claims 8-20 have been fully considered and are persuasive. Therefore the restriction requirement has been withdrawn.

With respect to applicant's request for clarification of the teaching of Yamamoto which pertains to middle portions which are free of direct attachment, Examiner has addressed those limitations and the relevant teaching of Yamamoto with greater detail in the rejection of claims 8-20.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (EP 0761193).

With respect to **claims 1-4,7:** Yamamoto teaches an absorbent article of pants type that comprising a laminated panel with liquid permeable topsheet, liquid impermeable bottom sheet with a core panel disposed in between as well as front waist, rear waist and crotch regions extending in a longitudinal direction of the article (Col. 2, lines 21 –31, Fig. 1). Yamamoto also teaches that there are first (around waist region), second (around the leg openings) and third (crosses upper end of core panel in the crotch region and the second elastic means) elastic means. (Col. 2, lines 31–48, Figs 1,2,3), wherein the elastic means are bonded between the top and backsheet (Col. 5, lines 55-58, Col. 6, lines 42-48).

With respect to **claim 6:** The elastic means taught by Yamamoto also have a free portion that extend along the side panels of the front and rear waist regions 17,18 respectively, and a fixed portion which are welded together which at side edges 20a and 20b of Figure 1. The freed portion of the elastic means is defined as the portion where the elastic means are not welded to side edges 20a and 20b.

With respect to **Claim 8:** Please see the rejection of claim 1 in addition to the following:
Yamamoto '193 teaches that the second elastic members 30 are bonded to the backsheet under the tension of a desired elongation percentage. The only arrangement of bonding capable of achieving such a uniform desired elongation percentage is an arrangement in which the members 30 are bonded to the base sheet 11 only at the opposing side edges, leaving a middle portion that connects said transversely opposing end portions and that is free of direct attachment to both said base sheet 11 and liquid absorbent panel 12. Further, since Yamaoto '193 implicitly teaches that the middle portions of the second elastic members are free of direct attachment to the base sheet and absorbent panel, said middle portions are capable of being

arranged such that they cross first elastic members 29 present at the waist hole margin. Yamamoto '193 teaches that third elastic members 31 are also bonded to the base sheet in the same arrangement so as to effect a desired elongation percentage, thus elastic members 31 are only bonded at their ends adjacent the waist margins, and thus are not bonded at the crossover points at which they intersect second waist members 30.

With respect to **Claim 9:** Since the second elastic members 30 are attached in a tensioned state, there exists a relaxed state of the article in which the middle portions of said members 30 are allowed to contract to a transverse dimension. This dimension will necessarily be no less than the transverse width of panel 12, as the presence of the panel impedes further contraction, i.e. the second members 30 will have a transverse dimension that is the same or slightly larger than the transverse width of said panel in the article's relaxed state.

With respect to **Claim 10:** The second elastic members 30 are bonded to the backsheet under the tension of a desired elongation percentage. The only arrangement of bonding capable of achieving such a uniform desired elongation percentage is an arrangement in which the members 30 are bonded to the base sheet 11 only at the opposing side portions, leaving a middle portion that connects said transversely opposing end portions and that is free of direct attachment to both said base sheet 11 and liquid absorbent panel 12.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. ('193).

With respect to **Claim 13**: Yamamoto '193 teaches that the panel created by said topsheet and said base sheet is a laminate panel, so though Yamamoto does not explicitly teach bonding spots located in between middle portions of adjacent second member middle portions, it would be obvious to one of ordinary skill in the art to create such bonding spots to retain the laminate nature of the panel, thus providing and maintaining the structural integrity of the diaper. Such positioning of bonding spots in the transverse middle of the panel would thus also contain the middle portions of the second elastic members, yet because the bonding spots do not bond the middle portions themselves, the desired elongation and contraction of those middle portions would not be affected by such bonding spots.

With respect to **Claim 14**: The second elastic members 30 are bonded to the backsheet under the tension of a desired elongation percentage. The only arrangement of bonding capable of achieving such a uniform desired elongation percentage is an arrangement in which the members 30 are bonded to the base sheet 11 only at the opposing side portions, leaving a middle portion that connects said transversely opposing end portions and that is free of direct attachment to both said base sheet 11 and liquid absorbent panel 12.

With respect to **Claim 15**: Yamamoto '193 teaches that the topsheet and base sheet are bonded to each other at their portions extending outward beyond an outer peripheral edge of panel 12, therefore said base sheet is free of any bonding spots in a region corresponding to said panel.

With respect to **Claim 16**: Since said topsheet and said base sheet are only bonded at their respective peripheries to each other and the second elastic members are bonded to at least the base sheet at their opposite end portions coterminous with said peripheries, said second elastic members are bonded so as to be prevented from forming a bundle with each other.

Claims 5, 11, 12 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (EP 0761193) in view of Yamamoto et al. (EP 0761194).

With respect to **Claims 5,11,12,18**: Yamamoto '193 teaches the invention substantially as claimed except for the third inner layer which the leg surrounding elastics are separated from the second and third elastic means as claimed by the applicant. Yamamoto '194 teaches a crotch region structure with a crotch section topsheet and crotch section bottom sheet in which the leg elastics (Figure 3,15) are disposed therebetween, and an outer sheet and a back sheet between which the first and second waist elastic members 13 and 14, respectively, of Figure 1 are disposed (Column 4, lines 10-55) to allow separate stretching means around the leg and waist openings. It would have been obvious to one skilled in the art at the time of the invention to modify the article of Yamamoto '193 with an additional sheet layer to provide individual stretching capability of the leg and waist openings according to the movement of the wearer of the article, as taught by Yamamoto '194.

With respect to **Claim 19**: The second elastic members 30 are bonded to the backsheet under the tension of a desired elongation percentage. The only arrangement of bonding capable of achieving such a uniform desired elongation percentage is an arrangement in which the

members 30 are bonded to the base sheet 11 only at the opposing side portions, leaving a middle portion that connects said transversely opposing end portions and that is free of direct attachment to both said base sheet 11 and liquid absorbent panel 12.

With respect to **Claim 20**: As stated previously, it would have been obvious to one of ordinary skill in the art to provide bonding spots or adhesive zones positioned in the transverse middle region of the article taught by Yamamoto '193 between adjacent middle portions of second elastic members 30. Again, since the chassis of the diaper is a laminated panel, and the adhesive zones in the middle region are not permitted to bond middle portions of the second elastic members, additional adhesive can only provide additional integrity and thus the only direction to increase the dimension of such zones is the transverse direction, creating adhesive zones elongated in the transverse direction and spaced in said transverse direction from end portions of adjacent second elastic members 30 between which said elongated adhesive zone is disposed.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto ('193) in view of Pozniak (U.S. Patent No. 6,045,543).

With respect to **Claim 17**: Yamamoto '193 does not teach a third sheet carrying printed indicia in a region corresponding to middle portions of said second elastic members. Pozniak teaches a diaper having five printed indicia lines 48A-E located in a transverse middle region of the diaper that correspond to mating indicia lines on fastener tabs. Pozniak teaches that the mating indicia indicate a proper fit when the lines appear continuous across the entire diaper, therefore it would be obvious to one of ordinary skill in the art to print indicia such as those taught by

Pozniak on the diaper taught by Yamamoto in a region which corresponds to the middle portions of the second elastic members to enable the user to ensure that the diaper is assembled correctly and comfortably.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH
September 1, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER



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